

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Limited proceeding to consider Duke Energy Florida, LLC's unopposed motion to approve rate mitigation agreement.

DOCKET NO. 20210158-EI  
ORDER NO. PSC-2021-0371-PCO-EI  
ISSUED: September 23, 2021

ORDER ON PROCEDURE

**I. Case Background**

On September 3, 2021, Duke Energy Florida, LLC (DEF) filed an Unopposed Motion to Approve Rate Mitigation Agreement (Motion), in Docket Nos. 20210001-EI, *In re: Fuel and purchased power cost recovery clause with generating performance incentive factor*, 20210010-EI, *In re: Storm protection plan cost recovery clause*, and 20210097-EI, *In re: Petition for limited proceeding for recovery of incremental storm restoration costs related to Hurricanes Eta and Isaias, by Duke Energy Florida, LLC*. Due to the continued increase in forecasted natural gas prices, DEF is projecting a \$246.8 million under-recovery of fuel costs for 2021, that would otherwise be due from DEF's customers starting in 2022. Recognizing the impact these fuel price increases will have on DEF's customers, DEF states that it has worked collaboratively with a number of interested parties to develop a creative means to mitigate the rate impacts of this increase. The resulting Rate Mitigation Agreement addresses issues or cost recovery associated with the three dockets referenced above, as well as some matters not previously raised in those dockets. Therefore, Docket No. 20210158-EI has been opened to address DEF's Motion and the proposed Rate Mitigation Agreement.

DEF, the Office of Public Counsel, Florida Industrial Power Users Group, Florida Retail Federation, White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate, Southern Alliance for Clean Energy, and Nucor Steel Florida, Inc. are signatories to the Rate Mitigation Agreement. DEF represents that the signatories do not oppose granting DEF's Motion. DEF represents that Tampa Electric Company, Florida Power & Light Company, Gulf Power Company, and Florida Public Utilities Company, who are parties to Docket Nos. 20210001-EI and 20210010-EI, take no position on the Motion. Finally, DEF represents that Walmart Inc., which is a party to Docket No. 20210010-EI, does not oppose the granting of DEF's Motion.

Consideration of DEF's Motion and the proposed Rate Mitigation Agreement is hereby scheduled for hearing on November 2, 2021. The purpose of the hearing will be to consider whether it is in the public interest to approve the proposed Rate Mitigation Agreement. To promote transparency and access to this proceeding, all parties to Docket Nos. 20210001-EI, 20210010-EI, and 20210097-EI, as well as Florida Retail Federation and Southern Alliance for Clean Energy, shall also be parties in Docket No. 20210158-EI.

This Order is issued pursuant to the authority granted by Rule 28-106.211, Florida Administrative Code (F.A.C.), which provides that the presiding officer before whom a case is

pending may issue any orders necessary to effectuate discovery, prevent delay, and promote the just, speedy, and inexpensive determination of all aspects of the case. Modifications to procedures governing parties to this docket may be made by subsequent procedural order.

## **II. Procedural Matters**

### Data Requests

Commission staff and the parties shall be permitted a limited time to send no more than 150 data requests. Parties are directed to respond to the data requests in writing so the response is received within 7 days of receipt of the request. All written data responses must be accompanied by an Affidavit identifying the persons providing the responses. All data responses must be received by October 22, 2021. Information obtained through data requests may be used by the parties in their oral arguments, by staff in advising the Commission, and by the Commissioners in consideration of the proposed Rate Mitigation Agreement.

### Confidential Information Provided Pursuant to Data Requests

Any information provided to the Commission staff pursuant to a discovery request by the staff or any other person and for which proprietary confidential business information status is requested pursuant to Section 366.093 Florida Statutes (F.S.), and Rule 25-22.006, F.A.C., shall be treated by the Commission as confidential. The information shall be exempt from Subsection 119.07(1), F.S., pending a formal ruling on such request by the Commission or pending return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been made a part of the evidentiary record in this proceeding, it shall be returned to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of this proceeding, it shall be returned to the person providing the information within the time period set forth in Section 366.093, F.S. The Commission may determine that continued possession of the information is necessary for the Commission to conduct its business.

Redacted versions of confidential filings may be served electronically, but in no instance may confidential information be electronically submitted. If the redacted version is served electronically, the confidential information (which may be on a CD, DVD, or flash drive) shall be filed with the Commission Clerk via hand-delivery, U.S. Mail, or overnight mail on the day that the redacted version was served via e-mail.

When a party other than the Commission staff requests information through discovery that the respondent maintains as proprietary confidential business information, or when such a party would otherwise be entitled to copies of such information requested by other parties through discovery (e.g., interrogatory responses), that party and respondent shall endeavor in good faith to reach agreement that will allow for the exchange of such information on reasonable terms, as set forth in Rule 25-22.006(7)(b), F.A.C.

Confidential Information at Hearing

Information for which proprietary confidential business information status is requested pursuant to Section 366.093, F.S., and Rule 25-22.006, F.A.C., shall be treated by the Commission as confidential. The information shall be exempt from Subsection 119.07(1), F.S., pending a formal ruling on such request by the Commission or pending return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been made a part of the evidentiary record in this proceeding, it shall be returned to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of this proceeding, it shall be returned to the person providing the information within the time period set forth in Section 366.093, F.S. The Commission may determine that continued possession of the information is necessary for the Commission to conduct its business.

It is the policy of this Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 366.093, F.S., to protect proprietary confidential business information from disclosure outside the proceeding. Therefore, any party wishing to use any proprietary confidential business information, as that term is defined in Section 366.093, F.S., at the hearing shall adhere to the following:

- (1) When confidential information is used in the hearing that has not been filed as prefiled testimony or prefiled exhibits, parties must have copies for the Commissioners, necessary staff, and the court reporter, in red envelopes clearly marked with the nature of the contents and with the confidential information highlighted. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- (2) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise confidentiality. Therefore, confidential information should be presented by written exhibit when reasonably possible.

At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the court reporter shall be retained in the Office of Commission Clerk's confidential files. If such material is admitted into the evidentiary record at hearing and is not otherwise subject to a request for confidential classification filed with the Commission, the source of the information must file a request for confidential classification of the information within 21 days of the conclusion of the hearing, as set forth in Rule 25-22.006(8)(b), F.A.C., if continued confidentiality of the information is to be maintained.

Any requests to hold portions of the hearing exempt from the requirements of Subsection 119.07(1), F.S., must be made in writing and filed with the Commission Clerk by October 22, 2021.

### **III. Hearing Procedures**

Subsection 120.57(4), F.S., permits the Commission to informally dispose of any proceeding by stipulation, agreed settlement, or consent order. Pursuant to Rule 28-106.302(2), F.A.C., the purpose of this hearing is for the Commission to take oral and written evidence or argument regarding the approval of the Rate Mitigation Agreement as being in the public interest.

The hearing agenda for November 2, 2021, will include the following:

- Parties present Opening Statements of no more than five minutes per party;
- Public comment;
- Parties present evidence and respond to questions from Commissioners regarding the Rate Mitigation Agreement.

Upon the admission of all testimony and evidence, and completion of the Commission's questions at hearing, the hearing record will be closed. At that time, the Commission may render a bench decision, provided all parties are willing to waive filing of post-hearing briefs. If a bench decision is not made, the Commission will render a decision during an Agenda Conference, date and time to be determined. Briefs, if any, will be due November 16, 2021.

The Commission has jurisdiction in this matter pursuant to Chapters 120, and 366, F.S., and is proceeding under its authority under Sections 366.04, 366.05, 366.06, and 120.57, F.S.

Based on the foregoing, it is

ORDERED by Commissioner Andrew Giles Fay, as Prehearing Officer, that this Order shall govern the conduct of these proceedings unless modified by the Commission.

By ORDER of Commissioner Andrew Giles Fay, as Prehearing Officer, this 23rd day of September, 2021.



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ANDREW GILES FAY  
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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

JSC

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Subsection 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.